

To: Interested Parties

Date: September 5, 2019

Explanation of the “Recall Dunleavy” Application Review Period

The Recall Dunleavy Committee (the “Committee”), is organized to seek a recall of Governor Mike Dunleavy pursuant to the Alaskans’ rights under Article XI, Section 8 of the Alaska Constitution.¹

Recall Dunleavy has filed their recall application with the signatures of approximately 48,000 Alaska voters.

Under AS 15.45.540 the Division of Elections is entrusted with the review of recall applications. The Division must focus on two factors under AS 15.45.550 to determine whether to certify the recall and issue signature petition booklets:²

- First, it must determine whether a sufficient number of qualified Alaska voters signed the recall application.
- Second, it must determine whether the recall application is “substantially in the required form,” meaning that it describes a legally sound basis for recall.

The statutes fail to specify a deadline for the application review. However, given the importance of the constitutional rights at stake, it is evident that the courts will hold the Division to a standard of reasonableness in the timing of this review.² Other related statutes, as well as past practice of the Division, dictates that this review **must be completed no later than October 7.**

Review Factor # 1 (Signature Count): Regarding the first factor, the Division must review the Recall application to ensure that there is a number of qualified voters equal to 10 percent of the statewide turnout in the last general election—a total of no less than 28,501. Although the statutes fail to specify how quickly the Division must review the “application” signatures, there is a statute that specifies how quickly the Division must review the second-phase “petition” signatures. That statute, AS 15.45.620, dictates that the Division “shall” review those signatures and make its determination **“[w]ithin 30 days” of their filing.** In the “petition” phase, supporters of a recall must gather signatures from qualified voters totaling 25% of the turnout in the prior general election—71,252 total signatures. Given that the Division is statutorily-required to review 2.5 times as many signatures in 30 days, it is more than

¹ The procedures for recall are laid out in detail in Alaska Statutes 15.45.470 to .720, as well as 6 AAC 25.240. ² There are actually four factors under the statute. However, we believe all parties agree that there is no dispute that the other two are satisfied. Specifically: 1) that this application was not filed during the first 120 days or within less than the last 180 days of Governor Dunleavy’s term in office; and 2) that Governor Dunleavy is in fact an official subject to recall (see AS 15.45.470 specifically listing the office of governor as “subject to recall by the voters of the state ...”).

² The fact that AS 15.45.550(2) puts strict sideboards on when a recall can be triggered demonstrates that a public official cannot be allowed to “sit” on an application and unreasonably delay its processing to the next stage.

reasonable to require review of the “application” phase signatures within 30 days, or not later than October 7th.³

Review Factor #2 (Legal Review): Regarding the second factor, the Division must perform a legal review of the grounds for recall. Specifically, it must confirm whether the grounds legally satisfy AS 15.45.510 by alleging that Governor Dunleavy has exhibited (1) lack of fitness, (2) incompetence, (3) neglect of duties, or (4) corruption. Like the signature processing above, this legal review must occur within a reasonable timeframe. In determining what timeframe is reasonable, it is important to note that the grounds themselves are less than 200 words long, and that the analysis is limited to the requirements of a single statute, noted above. There is no factual inquiry required on the Division’s part because they do not evaluate whether the allegations are true, simply whether the allegations themselves meet the law’s requirements.⁴

Additionally, the Department of Law, which advises the Division, has access to every Attorney General Opinion ever published on the subject of recall, and there are only a handful of Alaska Supreme Court opinions on the subject. In short, the grounds are not complex and there is a very limited body of law that needs to be applied to those grounds.

Finally, as shown in the below table, publicly available records demonstrate that the Division’s past practice has been to perform the legal review of recall petitions in 30 to 51 days, with an average review time of 37.5 days over the past 15 years.

Recall Application	Application Filed	AG Opinion Issued	Signature Review Completed
Rep. Lindsey Holmes	November 6, 2013	December 6, 2013	During the 30 days between filing and AG Opinion (see FN 66)
Rep. Kyle Johansen	August 29, 2011	October 3, 2011	During the 35 days between filing and AG Opinion. (see p. 21)
Sen. Ben Stevens	August 4, 2005	September 7, 2005	During the 34 days between filing and AG Opinion (see p. 22)

³ If AS 15.45.620 were applied mathematically to the application phase signatures (30 days divided by 2.5) it would actually only permit 12 days for this review.

⁴ As now-Justice Stowers noted in evaluating the recall of Senator Ben Stevens: "If there is a statement in the form of 'X is illegal' . . . those are statements of law, and that’s appropriate for the court . . . to evaluate those and to determine whether or not those are true and accurate statements of law." Specifically, the validity of the stated grounds "turns on whether the statement of law is valid or not." *No. 3AN-05-12133 CI, Media No. 3-AN3106-2 11:27:28 to 11:50:38 (Alaska Super. Jan. 4, 2006) (oral ruling granting summary judgment).*

Sen. Scott Ogan	February 17, 2004	April 8, 2004	During the 51 days between filing and AG Opinion (see p. 4)
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This past practice makes clear that any undue delay beyond a month would be highly unusual, and would appear to deny the Recall sponsors timely exercise of their constitutional rights. And, unlike the signatures themselves, the Department of Law has had access to—and has no doubt been analyzing—the highly-publicized grounds for recall since at least August 1, 2019.⁵ Accordingly, it is also reasonable that the Division complete its legal review within 67 days of the publication of the grounds (or 30 days after the application filing), not later than October 7th.

The Committee has asked the Division to respond no later than September 13th to confirm that it will complete its certification determination on or before October 7th.

⁵ The grounds have been publicly available at www.recalldunleavy.org as well as through dozens of media accounts since the Recall Dunleavy effort launched on August 1, 2019.